

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-338V

Filed: April 13, 2015

Not for Publication

SAMANTHA JENNEY,

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Petitioner,

*

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Damages decision based on proffer;
tetanus-diphtheria-acellular
pertussis (Tdap) vaccine; shoulder
injury related to vaccine
administration (SIRVA)

Ronald C. Homer, Boston, MA, for petitioner.

Claudia B. Gangi, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On April 23, 2014, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10–34 (2006), alleging that she suffered a shoulder injury as a result of the tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination she received on July 21, 2011. On July 18, 2014, respondent filed her Rule 4(c) Report, conceding that petitioner suffered from a shoulder injury related to vaccine administration (“SIRVA”) and recommending compensation.

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

On April 10, 2015, respondent filed Respondent's Proffer on Award of Compensation. The undersigned finds the terms of the proffer to be reasonable. Based on the record as a whole, the undersigned finds that petitioner is entitled to the award as stated in the proffer. Pursuant to the terms stated in the attached proffer, the court awards:

- a. a lump sum payment of **\$155,963.04**, representing life care expenses for Year 1 (\$15,299.00), past unreimbursable expenses (\$664.04), and pain and suffering (\$140,000.00). The award shall be in the form of a check for **\$155,963.04** payable to petitioner;
- b. a lump sum payment of **\$1,076.77**, representing compensation for satisfaction of the Boston Medical Center HealthNet Plan lien. The award shall be in the form of a check for **\$1,076.77** payable jointly to petitioner and

Boston Medical Center HealthNet Plan
Two Copley Place, Suite 600
Boston, MA 02116
ATTN: Kelvin Britto, OPL/TPL Specialist

Petitioner agrees to endorse this payment to the Boston Medical Center HealthNet Plan;

- c. a lump sum payment of **\$8,516.49**, representing compensation for satisfaction of the Neighborhood Health Plan lien. The award shall be in the form of a check for **\$8,516.49** payable jointly to petitioner and

Neighborhood Health Plan
253 Summer Street
Boston, MA 02210
ATTN: Angela Layne

Petitioner agrees to endorse this payment to Neighborhood Health Plan; and

- d. an amount sufficient to purchase the annuity contract described in paragraph II.D of the attached proffer. The award shall be in the form of a check payable to the life insurance company from which the annuity will be purchased.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

IT IS SO ORDERED.

Dated: April 13, 2015

/s/ Laura D. Millman
Laura D. Millman
Special Master

appropriate growth rate for life care items of compensation should be four percent (4.0%) for non-medical items and six percent (6.0%) for medical items, compounded annually from the date of judgment, as set forth in Tab B: Annuity Funding Portfolio. Petitioner agrees.

B. Lost Earnings

The parties agree that based upon the evidence of record, Samantha Jenney will be able to engage in gainful employment. Therefore, respondent proffers that Samantha Jenney is not entitled to receive future lost earnings compensation provided for under the Vaccine Act, 42 U.S.C. §300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$140,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursed Expenses

Evidence supplied by petitioner documents her expenditure of past un-reimbursable expenses related to her vaccine-related injury. Respondent proffers that the petitioner is entitled to past un-reimbursed expenses in the amount of \$664.04. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that Samantha Jenney should be awarded funds to satisfy the Boston Medical Center HealthNet Plan lien in the amount of \$1,076.77, and the Neighborhood Health Plan lien in the amount of \$8,516.49, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Boston Medical Center HealthNet

Plan and/or the Neighborhood Health Plan may have against any individual as a result of any Medicaid payments the Boston Medical Center HealthNet Plan and/or the Neighborhood Health Plan has made to or on behalf of Samantha Jenney from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about July 21, 2011, under Title XIX of the Social Security Act.

F. Attorney's Fees and Costs

This proffer does not address final attorneys' fees and costs. Petitioner is entitled to reasonable attorneys' fees and costs, to be determined at a later date upon petitioner filing substantiating documentation.

II. Form of the Award

The parties recommend that the compensation provided to petitioner for her future medical care needs should be made through a combination of a one-time cash payment and future annuity payments as described below, and request that the special master's decision and the Court's judgment reflect the following items of compensation.²

Respondent proffers and petitioner agrees that an award of compensation include the following elements:

A. A lump sum payment of \$155,963.04, representing life care expenses for Year 1 (\$15,299.00), past un-reimbursed expenses (\$664.04), and pain and suffering (\$140,000.00), in the form of a check payable to petitioner.

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

B. A lump sum payment of \$1,076.77, representing compensation for satisfaction of the Boston Medical Center HealthNet Plan lien, payable jointly to petitioner and

Boston Medical Center HealthNet Plan
Two Copley Place, Suite 600
Boston, MA 02116
ATTN: Kelvin Britto, OPL/TPL Specialist

Petitioner agrees to endorse this payment to the Boston Medical Center HealthNet Plan.

C. A lump sum payment of \$8,516.49, representing compensation for satisfaction of the Neighborhood Health Plan lien, payable jointly to petitioner and

Neighborhood Health Plan
253 Summer Street
Boston, MA 02210
ATTN: Angela Layne

Petitioner agrees to endorse this payment to the Neighborhood Health Plan.

D. An amount sufficient to purchase an annuity contract,³ subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A, attached hereto, and paid to the life insurance company⁴ from

³ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

⁴ The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

which the annuity will be purchased.⁵ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent payments shall be provided through respondent's purchase of an annuity, which annuity will make payments directly to the petitioner only so long as she is alive at the time a particular payment is due. The "annual amounts" set forth in Tab B describe the total year sum to be paid and do not require that the payment be made in one single payment.

The parties agree that petitioner is a competent adult and that no guardians/conservators of his estate will be required.

1. Growth Rates

Respondent proffers that a four percent (4.0%) growth rate should be applied to all non-medical items, and a six percent (6.0%) growth rate should be applied to all medical items.

Petitioner agrees.

2. Life-contingent Annuity

Petitioner will continue to receive the annuity payments for future medical care from the Life Insurance Company only so long as she is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be made within twenty (20) days of petitioner's death.

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|-------------------------------------------------------------------------------|---------------------|
| A. | Lump Sum paid to petitioner: | \$155,963.04 |
| B. | Lump Sum paid jointly to petitioner and Boston Medical Center HealthNet Plan: | \$1,076.77 |

⁵ Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No.09-15-0056.

C. Lump Sum paid jointly to petitioner and Neighborhood Health Plan:

\$8,516.49

D. An amount sufficient to purchase the annuity contract described above in section II. D.

Respectfully submitted,

BENJAMIN C. MIZER
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Claudia B. Gangi
CLAUDIA B. GANGI
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 616-4138

Dated: April 10, 2015

Pet. Samantha Jenney
D.O.B. 05/24/1969

DATE: 03/20/15
TIME: 11:20 PM

SUMMARY OF LIFE CARE ITEMS - AGREED LIFE CARE PLAN dated March 16, 2015

ITEM OF CARE		Insurance	Medical Care	Ancillary Services	Equipment	Medications	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0 and 6.0% ITEMS & APPLYING THE GROWTH RATES
GROWTH RATE		6.0%	6.0%	6.0%	6.0%	6.0%	4.0%	4.0%			
AGE	YEAR										
46	2015	7,113.08	523.40	785.00	768.08	540.00	4,007.49	480.87	9,730	4,488	14,981
47	2016	7,113.08	348.40	460.00	202.39	540.00	3,878.50	68.31	8,664	3,947	14,004
48	2017	7,113.08	348.40	460.00	202.39	540.00	3,878.50	68.31	8,664	3,947	14,758
49	2018	7,113.08	348.40	460.00	202.39	540.00	3,878.50	68.31	8,664	3,947	15,555
50	2019	10,463.08	0.00	390.00	199.25	0.00	3,878.50	76.33	11,052	3,955	19,602
51	2020	7,113.08	104.80	70.00	202.39	540.00	3,878.50	65.18	8,030	3,944	16,381
52	2021	7,113.08	104.80	70.00	202.39	540.00	3,878.50	65.18	8,030	3,944	17,264
53	2022	7,113.08	104.80	70.00	202.39	540.00	3,878.50	65.18	8,030	3,944	18,196
54	2023	7,113.08	104.80	70.00	202.39	540.00	3,878.50	65.18	8,030	3,944	19,180
55	2024	7,113.08	414.80	255.00	202.39	540.00	3,878.50	97.71	8,525	3,976	21,153
56	2025	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	9,880
57	2026	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	10,352
58	2027	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	10,847
59	2028	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	11,366
60	2029	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	11,911
61	2030	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	12,484
62	2031	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	13,085
63	2032	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	13,717
64	2033	0.00	428.30	434.80	214.98	928.56	3,878.50	65.18	2,007	3,944	14,380

Pet. Samantha Jenney
D.O.B. 05/24/1969

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SUMMARY OF LIFE CARE ITEMS - AGREED LIFE CARE PLAN dated March 16, 2015

ITEM OF CARE		Insurance	Medical Care	Ancillary Services	Equipment	Medications	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0 and 6.0% ITEMS & APPLYING THE GROWTH RATES
GROWTH RATE		6.0%	6.0%	6.0%	6.0%	6.0%	4.0%	4.0%			
AGE	YEAR										
65	2034	920.16	85.66	290.00	307.01	0.00	3,761.50	49.09	1,603	3,811	13,490
66	2035	920.16	85.66	290.00	163.13	0.00	3,761.50	49.09	1,459	3,811	13,643
67	2036	920.16	85.66	290.00	163.13	0.00	3,761.50	49.09	1,459	3,811	14,288
68	2037	920.16	85.66	290.00	163.13	0.00	3,761.50	49.09	1,459	3,811	14,965
69	2038	920.16	85.66	290.00	163.13	0.00	3,761.50	49.09	1,459	3,811	15,675
70	2039	920.16	85.66	290.00	163.13	0.00	3,761.50	49.09	1,459	3,811	16,420
71	2040	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	16,613
72	2041	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	17,410
73	2042	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	18,247
74	2043	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	19,126
75	2044	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	20,049
76	2045	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	21,019
77	2046	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	22,037
78	2047	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	23,107
79	2048	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	24,231
80	2049	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	25,412
81	2050	920.16	85.66	290.00	163.13	0.00	3,549.00	49.09	1,459	3,598	26,653
		90,124	7,714	11,933	7,438	13,217	135,428	2,542	130,426	137,970	601,484
		33.58%	2.87%	4.45%	2.77%	4.92%	50.46%	0.95%			100.00%

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ANNUITY FUNDING PORTFOLIO

AGREED LIFE CARE PLAN dated March 16, 2015

4.0 and 6.0% GROWTH RATES

DATE: 03/20/15
TIME: 11:20 PM

Pet. Samantha Jenney
D.O.B. 05/24/1969

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Settlement Item	TOTAL	ANNUAL	CASH &	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUAL	UMULATIVE
Starting Amount	MEDICAL	STRUCTURED	ANNUITY	1,640	7,999	1,040	3,891	374	328	SAFETY	SAFETY
Inflation Factor	CARE NEEDS	SETTLEMENT	LUMP	6.00%	6.00%	6.00%	4.00%	4.00%	4.00%	MARGIN	MARGIN
Beginning Year	2015	BENEFITS	SUMS	2016	2016	2025	2016	2016	2034	2015	2015
Ending Year	2050			LIFE	2023	2033	LIFE	2033	2039	2050	2050

AGE	YEAR	TOTAL	S/S	Cash &	Deferred	Deferred	Deferred	Deferred	Deferred	Deferred	Safety	Cum.Safety
		NEEDS	TOTAL	Lump Sums	Annuity	Annuity	Annuity	Annuity	Annuity	Annuity	Margin	Margin
46	2015	14,981	15,299	15,299							318	318
47	2016	14,004	13,904		1,640	7,999		3,891	374		-100	218
48	2017	14,758	14,653		1,738	8,479		4,047	389		-105	113
49	2018	15,555	15,443		1,843	8,988		4,209	405		-112	1
50	2019	19,602	19,601	3,323	1,953	9,527		4,377	421		-1	0
51	2020	16,381	17,158		2,070	10,099		4,552	438		777	777
52	2021	17,264	18,088		2,195	10,704		4,734	455		824	1,601
53	2022	18,196	19,070		2,326	11,347		4,923	473		873	2,474
54	2023	19,180	20,106		2,466	12,028		5,120	492		926	3,400
55	2024	21,153	17,757	9,306	2,614			5,325	512		-3,396	4
56	2025	9,880	9,881		2,771		1,040	5,538	532		1	5
57	2026	10,352	10,353		2,937		1,102	5,760	554		1	6
58	2027	10,847	10,848		3,113		1,169	5,990	576		1	7
59	2028	11,366	11,367		3,300		1,239	6,230	599		1	8
60	2029	11,911	11,913		3,498		1,313	6,479	623		1	9
61	2030	12,484	12,485		3,708		1,392	6,738	648		1	10
62	2031	13,085	13,087		3,930		1,475	7,007	674		1	11
63	2032	13,717	13,718		4,166		1,564	7,288	700		1	13
64	2033	14,380	14,382		4,416		1,658	7,579	729		2	14

ANNUITY FUNDING PORTFOLIO**AGREED LIFE CARE PLAN dated March 16, 2015****4.0 and 6.0% GROWTH RATES**

DATE: 03/20/15
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Pet. Samantha Jenney
D.O.B. 05/24/1969

		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Settlement Item		TOTAL	ANNUAL	CASH &	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUAL UMULATIVE	
Starting Amount		MEDICAL	STRUCTURED	ANNUITY	1,640	7,999	1,040	3,891	374	328	SAFETY	SAFETY
Inflation Factor		CARE NEEDS	SETTLEMENT	LUMP	6.00%	6.00%	6.00%	4.00%	4.00%	4.00%	MARGIN	MARGIN
Beginning Year		2015	BENEFITS	SUMS	2016	2016	2025	2016	2016	2034	2015	2015
Ending Year		2050			LIFE	2023	2033	LIFE	2033	2039	2050	2050
AGE	YEAR	TOTAL	S/S	Cash &	Deferred	Deferred	Deferred	Deferred	Deferred	Deferred	Safety	Cum.Safety
		NEEDS	TOTAL	Lump Sums	Annuity	Annuity	Annuity	Annuity	Annuity	Annuity	Margin	Margin
65	2034	13,490	14,251	1,359	4,681			7,882		328	761	775
66	2035	13,643	13,501		4,962			8,198		341	-142	633
67	2036	14,288	14,140		5,260			8,526		355	-148	485
68	2037	14,965	14,811		5,575			8,867		369	-154	331
69	2038	15,675	15,515		5,910			9,221		384	-160	171
70	2039	16,420	16,254		6,264			9,590		399	-166	4
71	2040	16,613	16,614		6,640			9,974			1	5
72	2041	17,410	17,411		7,039			10,373			1	7
73	2042	18,247	18,249		7,461			10,788			1	8
74	2043	19,126	19,128		7,909			11,219			2	10
75	2044	20,049	20,051		8,383			11,668			2	11
76	2045	21,019	21,021		8,886			12,135			2	13
77	2046	22,037	22,039		9,419			12,620			2	15
78	2047	23,107	23,109		9,984			13,125			2	17
79	2048	24,231	24,233		10,584			13,650			2	19
80	2049	25,412	25,414		11,219			14,196			2	22
81	2050	26,653	26,655		11,892			14,764			3	25
ITEMIZED TOTALS		601,484	601,509	29,287	182,753	79,170	11,951	286,581	9,591	2,176	25	25

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